

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
USTA Petition for Declaratory Ruling)	GN Docket No. 00-185
Regarding Universal Service Obligations)	
Of Cable Operators)	
)	

**COMMENTS OF
THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. Introduction and Summary

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to United States Telecom Association's (USTA) Petition for Declaratory Ruling concerning the universal service obligations of cable operators that provide broadband transmission service.¹ OPASTCO is a national trade association representing approximately 500 independently owned and operated small telecommunications service providers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, are "rural telephone

¹ *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Pleading Cycle Extended; and United States Telecom Association Files Petition for Declaratory Ruling Regarding Universal Service Obligations of Cable Operators, Pleading Cycle Established*, Public Notice, GN Docket No. 00-185, DA 00-2329, (rel. Oct. 12, 2000).

companies” as defined by the Telecommunications Act of 1996 (1996 Act).² Together, OPASTCO members serve over 2.5 million customers. In addition to wireline voice service, many OPASTCO members provide additional communications services to their customers including cable television, dial-up and high-speed Internet access, and wireless communications.

OPASTCO agrees with USTA that cable operators that provide broadband transmission service should be required to contribute to the universal service fund. The 1996 Act provides for such contributions, regardless of exactly how the Commission ultimately determines cable modem service should be classified. Contributions from cable broadband transmission service providers would also be consistent with the Commission’s commitment to competitive and technological neutrality. Finally, contributions would be in the public interest, helping to maintain the necessary sufficiency of the universal service fund while decreasing the proportion of current contributors’ responsibility.

II. It is lawful and appropriate for cable operators that provide broadband transmission service to contribute to the universal service fund

Sec. 254(d) of the 1996 Act states, in part, that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute” to the universal service fund on an equitable and nondiscriminatory basis. The FCC has initiated a notice of inquiry which seeks comment on whether or not cable modem service, or cable broadband transmission, is in fact a “telecommunications service.”³ But the FCC does not necessarily have

² 47 U.S.C. § 153(37).

³ *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Notice of Inquiry, GEN Docket No. 00-185, FCC 00-355, (rel. Sep. 28, 2000), paras. 18-21.

to answer that question in the affirmative in order to require providers of cable broadband transmission to contribute to universal service.⁴

Sec. 254(d) also states, in part, that “[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.” Clearly, there is a component of cable modem service that meets the 1996 Act’s definition of “telecommunications” in that it includes transmission capability between the subscriber and a given destination which does not alter the form or content of the information being sent.⁵ Nevertheless, even if the Commission were to decide to classify cable modem service as an “information service,” that term includes a telecommunications component as part of its definition.⁶ In addition, the Commission has previously established that “a substantial portion” of Internet traffic is interstate in nature⁷ and USTA’s petition correctly underscores that the Commission has jurisdiction over interstate traffic.⁸ Therefore, as USTA correctly states, regardless of whether or not cable modem service is classified as a “telecommunications service,” the Commission has ample “permissive” authority under Sec. 254(d) to require cable operators that provide broadband transmission to

⁴ OPASTCO does not take a position at this time on the regulatory classification of cable modem service. However, should cable modem service be determined to be a telecommunications service, OPASTCO does not believe that the full panoply of common carrier regulation should apply to these providers.

⁵ See 47 U.S.C. §153(43).

⁶ “The term ‘information service’ means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information *via telecommunications*...” 47 U.S.C. §153(20) (emphasis added).

⁷ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 99-38 (rel. Feb. 26, 1999), para. 18.

⁸ USTA Petition, pp. 7 - 8.

contribute to the universal service fund.⁹

III. Universal service contributions from cable operators providing broadband transmission service would further the Commission's principles of competitive and technological neutrality and benefit the public interest

The Commission's authority to require cable operators providing broadband transmission service to contribute to the universal service fund is clear. Such a ruling would also be consistent with the 1996 Act's Sec. 254(d) nondiscrimination requirement as well as the Commission's own principle of competitive and technological neutrality in administering universal service.¹⁰ In fact, in its May 8, 1997 Order in CC Docket No. 96-45, the Commission states that "competitive neutrality is consistent with several provisions of section 254 including the explicit requirement of equitable and nondiscriminatory contributions."¹¹ As the USTA petition points out, wireless carriers, along with wireline carriers, must contribute to universal service.¹² It is neither competitively nor technologically neutral to only require carriers that utilize certain technologies to contribute to the fund while exempting another group of providers from the obligation. As communications technologies and service offerings converge at a rapid pace in an increasingly competitive environment, it is essential for the Commission to adhere to the 1996 Act's requirement for equitable and nondiscriminatory contributions.

Finally, requiring providers of cable broadband transmission service to contribute to universal service is in the public interest. USTA correctly notes that when some carriers do not

⁹ *Ibid.*, fn. 17.

¹⁰ *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 97-157, (rel. May 8, 1997), paras. 47-49.

¹¹ *Id.*, para. 48.

contribute to universal service support, the obligation upon those who do contribute is greater.¹³

The public interest is served when support obligations are spread among the largest number of providers as possible. Spreading support obligations as widely as possible reduces each company's contribution which should reduce the level of universal service "fees" that are passed on to consumers.¹⁴ In addition, spreading the obligations increases the feasibility of establishing a "sufficient" federal support mechanism,¹⁵ thereby helping to assure that all Americans have affordable access to quality telecommunications and information services.

¹² USTA Petition, p. 2.

¹³ *Id.*, pp. 2, 9.

¹⁴ The desirability of broadening the base of contributors was recently illustrated by AT&T, which described itself as "supportive of basing USF support on the broadest possible assessment base" because doing so "is essential to ensure its stability and neutrality..." AT&T Comments on Rural Task Force Recommendation, In the Matter of *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 00-J-3 (filed Nov. 3, 2000), p. 4.

¹⁵ 47 U.S.C. §254(b)(5).

IV. Conclusion

For the reasons described above, OPASTCO agrees with USTA that the Commission should issue a declaratory ruling requiring cable operators that provide broadband transmission service to contribute to universal service.

Respectfully submitted,

**THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich
Senior Policy Analyst

OPASTCO
21 Dupont Circle, NW
Suite 700
Washington, DC 20036
(202) 659-5990

December 1, 2000

CERTIFICATE OF SERVICE

I, Tiffany N. Belk, hereby certify that on this, the 1st day of December, 2000, a copy of OPASTCO's comments was sent by first class United States mail, postage prepaid, or hand delivered, to those listed on the attached sheet.

/s/ Tiffany N. Belk_____

Tiffany N. Belk

SERVICE LIST
GN Docket No. 00-185

Sheryl Todd (3 copies)
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-B540
Washington, DC 20554

Johanna Mikes
Common Carrier Bureau
Federal Communications Commission
445 12th Street SW
Room 5-C163
Washington, DC 20554

Christopher Libertelli
Common Carrier Bureau
Federal Communications Commission
445 12th Street SW
Room 5-C264
Washington, DC 20554

Carl Kandutsch
Cable Services Bureau
Federal Communications Commission
445 12th Street SW
Room 3-A832
Washington, DC 20554

Douglas Sicker
Office of Engineering and Technology
Federal Communications Commission
445 12th Street SW
Room 7-A325
Washington DC 20554

Robert Cannon
Office of Plans and Policy
Federal Communications Commission
445 12th Street SW
Room 7-B410
Washington, DC 20554

Stephen L. Goodman
William F. Maher, Jr.
Halprin, Temple, Goodman & Maher
555 12th Street NW
Suite 950 North
Washington, DC 20004

Lawrence E. Sarjeant
Linda Kent
Keith Townsend
John W. Hunter
Julie Rones
USTA
1401 H Street NW
Suite 600
Washington, DC 20005

International Transcription Service, Inc.
445 12th Street SW
CY-B402
Washington, DC 20554